

APPEAL NO. 030439
FILED MARCH 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 15, 2002, with the record closing on August 29, 2002. With regard to the only issue before her, the hearing officer determined that (decendent) was not in the course and scope of his employment when he was fatally injured in a motor vehicle accident (MVA) on _____.

In Texas Workers' Compensation Commission Appeal No. 022452, decided November 6, 2002, we remanded the case for the hearing officer to reconsider all the evidence and comment on her interpretation of why the whole crew was returning to Texas in employer-provided vehicles when none of the crew, other than the decedent and his brother-in-law who lived with him, lived in Texas.

The hearing officer did as directed and again determined that the decedent was not in the course and scope of his employment when he was fatally injured in a MVA on _____. The appellants (claimant beneficiaries) appeal, requesting reversal of the hearing officer's determinations. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The background facts are set out in Appeal No. 022452, *supra*, and need not be repeated here. In that case we requested that the hearing officer reconsider the evidence and explain her rationale regarding some evidence we believed was compellingly contrary to her decision. The hearing officer did so, commenting:

In my opinion, the credible evidence is that since the (state) job-site was temporarily shut down, Decedent and his crew were being sent back to the (city) area for some personal time off, and that since Decedent was the crew chief, or foreman, that his crew would travel with him, and be put up in a hotel in (city) rather than left alone, minus their crew chief in a (state) hotel for a temporary shut down of a week or two.

The preponderance of the credible evidence is that at the time of the fatal accident, Decedent and his crew were sent back to (city) for some personal time off, until the (state) job site funding was worked out, and that Decedent and his crew as was the usual practice "all go home together." Therefore the determination must still be that Decedent was not in the course and scope of his Employment when fatally injured in a [MVA] on _____.

The hearing officer is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). We accept the hearing officer's interpretation of the testimony as being supported by the evidence and not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ADVANTAGE WORKERS' COMPENSATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge